

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



/S/ RUSS KENDIG

Russ Kendig
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:) CHAPTER 7
)
TERESA ANN KITZMILLER,) CASE NO. 10-61455
)
Debtor.) JUDGE RUSS KENDIG
)
)
) ORDER GRANTING
) APPLICATION TO PROCEED
) IN FORMA PAUPERIS

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on April 8, 2010. Debtor has complied with the Court's requests for additional information.

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." The Court's ability to waive the filing fee is permissive, not mandatory. The Court must consider both qualitative and quantitative factors in its decision.

The applicable poverty income levels are available from the Department of Health and Human Services and can be found at:

[¹](http://www.uscourts.gov/bankruptcycourts/povertyguidelines2009.pdf)
According to the chart, the poverty income for a family of three, at 150% of poverty, is \$2,288.75 per month. According to the application, Debtor's combined average monthly income, as stated on line 16 of Schedule I, is \$1,385.49. Debtor's pay advices demonstrate that the actual amount may be lower. Consequently, the Court finds that Debtor's income is less than 150% of the official poverty lien for a family of three.

Next, the Court must determine whether Debtor has the ability to pay the filing fee in installments. Debtor's application, and Schedule J, itemize monthly expenses of \$2,100.00. Debtor's expenses are not unreasonable. Schedule J also shows Debtor's income is not sufficient to pay all of her monthly expenses, resulting in a monthly shortfall of \$714.50. Debtor's monthly income does not allow her to make installment payments on the filing fee. Further, Debtor's 2009 federal income tax refund indicates she owes money to the federal government. Based on these facts, the Court finds that Debtor does not have the ability to pay the filing fee in installments.

In light of the above, the Court hereby **GRANTS** Debtor's application to waive the filing fee. This order applies only to the initial case filing fee and not any subsequent fees which may be payable by Debtor in this case. This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

It is so ordered.

#

Service List:

Teresa Ann Kitzmiller
3354 Ault Rd
Mineral City, OH 44656

Anthony J. DeGirolamo
Courtyard Centre, Suite 307
116 Cleveland Ave., N.W.
Canton, OH 44702

¹ Per information found at <http://aspe.hhs.gov/POVERTY/09extension.shtml>, as set forth and pursuant to the Continuing Extension Act of 2010 (Pub. L. 111-157), the 2009 poverty guidelines are in effect through at least May 31, 2010.

CERTIFICATE OF NOTICE

District/off: 0647-6
Case: 10-61455

User: mfish
Form ID: pdf914

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Total Noticed: 3

Date Rcvd: May 14, 2010

The following entities were noticed by first class mail on May 16, 2010.
db +Teresa Ann Kitzmiller, 3354 Ault Rd, Mineral City, OH 44656-9008
ust +Cynthia J. Thayer, US Department of Justice, 201 Superior Avenue, Suite 441,
Cleveland, OH 44114-1234
petitpre +Cherill Franson, PO Box 1401, American Fork, UT 84003-6401

The following entities were noticed by electronic transmission.
NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****
aty Kelly Robbenolt
TOTALS: 1, * 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 16, 2010

Signature:

